

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number:  18511-010001
<b>CERTIFICATE OF MAILING BY EFS-WEB FILING</b>  I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-Web system on this date: March 13, 2008	Application Number  10/686,897	Filed  October 15, 2003
	First Named Inventor  Christopher A. Rygaard	
	Art Unit  2193	Examiner  Insun Kang
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reasons stated on the attached sheets. Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>52,978</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;"> <p>_____ /Brian J. Gustafson/ Signature</p> <p>_____ Brian J. Gustafson Typed or printed name</p> <p>_____ (650) 839-5070 Telephone number</p> <p>_____ March 13, 2008 Date</p> </div> </div> <p style="font-size: small; margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.</p>		
<input checked="" type="checkbox"/> Total of 1 forms are submitted.		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Christopher A. Rygaard                      Art Unit : 2193  
Serial No. : 10/686,897                                      Examiner : Insun Kang  
Filed : October 15, 2003                                      Conf. No. : 7543  
Title : MOBILE APPLICATION MORPHING SYSTEM AND METHOD

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Commissioner for Patents  
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

The brief is in response to legal and factual deficiencies in the final Office Action mailed December 26, 2007, and the Advisory Action mailed February 28, 2008. This brief is being filed with a Notice of Appeal.

Claims 1-42 were pending as of the action mailed on December 26, 2007. Claims 1, 10, 19, 25, and 34 are in independent form. The Examiner rejected claims 1-42 under 35 U.S.C. § 103(a) as allegedly unpatentable over “Jumping Beans,” Ad Astra Engineering, 12/3/1998, pages 1-44 (“Jumping Beans”) in view of Zhou et al. “Adaptation and Specialization for High Performance Mobile Agents,” USENIX, 1999 (“Zhou”).

*I. The cited art does not disclose or suggest a morphing module that alters the jumping application as the jumping application jumps between hosts.*

Claim 1 is directed jumping application morphing console that alters a jumping application that is jumping between two or more hosts connected to the morphing console. The morphing console includes a morphing module that alters the jumping application as the jumping application jumps between hosts. The morphing console also includes a morphing module that includes instructions that determine a next host to which the jumping application is being dispatched and instructions that alter the behavior of the jumping application for the next host using a first behavior package associated with the next host.

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The Examiner acknowledges that Jumping Beans does not disclose the claimed morphing module. However, the Examiner states that Zhou discloses the claimed morphing module. Applicant traverses the rejection.

Zhou discloses a number of features associated with mobile applications. In particular, Section 3 of Zhou discloses agent morphing. *See* Zhou page 6. In Zhou, agent morphing is described as changing a mobile application between a neutral (platform independent) form and a native (platform dependent) form. *See* page 6, section 3.1. The mobile application is programmed to initially enter a new host in the neutral form and then morph to the native form. *See* page 6, section 3.1.

Specifically, in Zhou, the mobile application, before it migrates to a next host, is morphed into a platform independent neutral form. *See* page 7, second full paragraph. The mobile application then migrates to the next host. *See* page 7, second full paragraph. After arriving at the next host, the mobile application can again morph to the native form corresponding to the “specific platform on which it is currently running.” *See* page 6, section 3.1.

Additionally, the Examiner states in the Advisory Action mailed February 28, 2008, that Zhou states the morphing can “be triggered at any point during agent execution” citing page 7, left column, third paragraph. Applicant first notes that this refers to triggering morphing, not where the morphing actually occurs. Moreover, there is no disclosure or suggestion in Zhou that the morphing occurs anywhere other than on a host either prior to migration or after arrival. A generic statement that triggering morphing can occur at any time during execution is legally insufficient to support a rejection to a claim specifically requiring that the morphing console alter the jumping application as the jumping application jumps between hosts.

Consequently, in Zhou, all disclosed morphing occurs either on a host prior to migration or on a host after arrival. Zhou does not disclose or suggest a morphing console that alters a jumping application that is jumping between two or more hosts connected to the morphing console as the jumping application jumps between hosts. Thus, the morphing console is not a dispatching or receiving host. Instead the morphing console alters the jumping application en route from the dispatching host to the receiving host. Consequently, the mobile application is altered as it is jumping between hosts, not before or after a jump.

Zhou does not disclose or suggest altering a jumping application using a behavior package associated with the next host after leaving a host but prior to arriving at a next host (i.e., during a jump between hosts). Moreover, Zhou explicitly teaches against morphing a jumping application while jumping between hosts. For example, Zhou discloses morphing at a host before migration. Additionally, Zhou discloses that upon arrival at a next host, the mobile application can morph to a platform dependent native form. The mobile application will only morph to a native form upon arrival if the destination host has a platform corresponding to the native form of the mobile application.

Furthermore, because Zhou does not disclose morphing during a jump, Zhou also fails to disclose or suggest a morphing console that determines which host is the next host and then alters the behavior of the jumping application for the next host, as required by claim 1. While Jumping Beans discloses an itinerary identifying a dispatch path for a mobile application, this does not disclose or suggest a morphing console determining the next host and then altering the behavior of the jumping application for that next host.

Additionally, the Examiner states, in the responses to Applicant's arguments, that claim 1 does not recite that the morphing module alters the jumping application before it is dispatched to a next host. Applicant respectfully submits that the Examiner has misread the language of claim 1. Claim 1 recites that the morphing module is part of a jumping application morphing console and that two or more hosts are connected to the morphing console. Thus, the morphing console is not a host executing the mobile application.

Moreover, claim 1 recites that the morphing console includes instructions that determine a next host to which the jumping application is being dispatched and instructions that alter the behavior of the jumping application for the next host using a first behavior package. Therefore, claim 1 is clearly directed to a morphing console that alters a jumping application while the jumping application is jumping between hosts and before the jumping application is sent from the morphing console to the next host (i.e., the mobile application is altered at a time in which the mobile application is not at a host, but is instead intercepted by the morphing console while jumping).

In the Advisory Action mailed February 28, 2008, the Examiner states that Claim 1 can be interpreted to include morphing at a host prior to a jump. The Examiner does not base this

interpretation on the claim language, but instead on a statement in Applicant's October 2007 response indicating that "the morphing console" morphs the jumping application before it is dispatched to a next host." However, this statement refers to a dispatch from the morphing console, not the dispatch from a dispatching host to a next host and therefore the quote is not "evidence" of morphing on the dispatching host. In other words, the jumping application is dispatched from the morphing console to continue on to the next host after it has been altered by the morphing console.

Regardless, the plain language of the claim, as set forth above, is clear. The morphing console is a separate structure from the hosts executing the jumping application. Claim 1 requires that the jumping application is jumping between two or more hosts connected to the morphing console and that the morphing module alters the jumping application as the jumping application jumps between hosts. It is legal error to ignore this claim limitation in rejecting claim 1.

Applicant respectfully submits that claim 1, as well as claims 2-9, which depend from claim 1, are in condition for allowance.

Claim 10 stands rejected over Jumping Beans in view of Zhou. Claim 10 is directed to a jumping application morphing console that includes means for altering the behavior of the jumping application for the next host using a particular behavior package associated with the next host when the jumping application jumps between hosts. For at least the same reasons as set forth above with respect to claim 1, claim 10, as well as claims 11-18, which depend from claim 10, are in condition for allowance.

Claim 19 stands rejected over Jumping Beans in view of Zhou. Claim 19 is directed to a computer-implemented method for altering the behavior of a jumping application that includes receiving a jumping application during a jump from a first host, altering the behavior of the jumping application for the next host based on using a behavior package associated with the next host, and dispatching the jumping application to the next host. As set forth above with respect to claim 1, Zhou does not disclose or suggest altering the behavior of a jumping application during a jump between hosts according to a behavior package associated with the next host. Applicant respectfully submits that claim 19, as well as claims 20-24, which depend from claim 19, are in condition for allowance.

Claim 25 stands rejected over Jumping Beans in view of Zhou. Claim 25 is directed to a jumping application morphing system that includes a management and security console connected to two or more host computers where the management and security console includes a morphing module that alters a jumping application as the jumping application jumps between hosts. For at least the same reasons as set forth above with respect to claim 1, claim 25, as well as claims 26-33, which depend from claim 25, are in condition for allowance.

Claim 34 stands rejected over Jumping Beans in view of Zhou. Claim 34 is directed to a server computer for a jumping application morphing system that includes instructions that determine a next host to which the jumping application is being dispatched and instructions that alter the behavior of the jumping application for the next host using a particular behavior package associated with the next host. Jumping Beans and Zhou do not disclose or suggest a server computer altering the behavior of jumping application for a next host using a behavior package associated with the next host. For this reason and those set forth above with respect to claim 1, claim 34, as well as claims 35-42, which depend from claim 34, are in condition for allowance.

By responding in the foregoing remarks only to particular positions taken by the Examiner, Applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, Applicant's selecting some particular arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist.

Please charge any fees or credits to deposit account 06-1050.

Respectfully submitted,

Date: March 13, 2008

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